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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,510	05/21/2007	Eugen Kloos	LZ-116PCT	1654
40570	7590	03/17/2011		
LUCAS & MERCANTI, LLP 475 Park Avenue South, 15th Floor New York, NY 10016			EXAMINER BURCH, MELODY M	
			ART UNIT 3657	PAPER NUMBER
			NOTIFICATION DATE 03/17/2011	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

INFO@LMIPLAW.COM

**Office Action Summary****Application No.**

10/591,510

**Applicant(s)**

KLOOS ET AL.

**Examiner**

Melody M. Burch

**Art Unit**

3657

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/8/11.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/8/11 has been entered.

### ***Claim Rejections - 35 USC § 102***

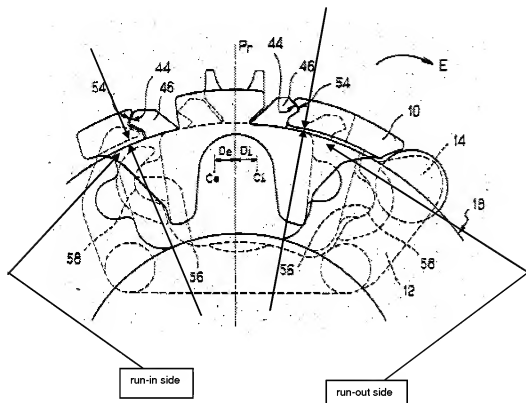
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

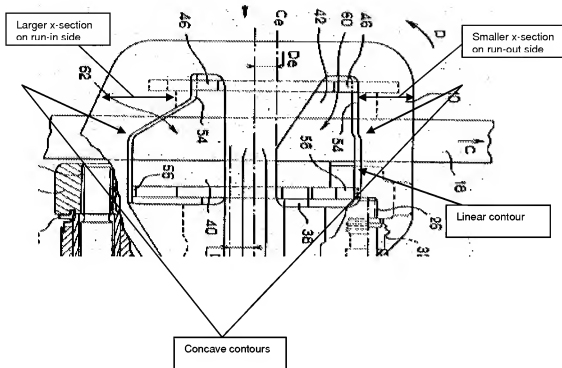
3. Claims 1-8, 10-12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4632227 to Mery et al.

Re: claims 1 and 3-8. Mery et al. show in figure 1 a disk brake with a brake disk 18 that has a preferred direction of rotation; a first brake pad 40 with a first center of gravity  $C_i$  on a first side of the brake disk 18; -- a second brake pad 42 with a second center of gravity  $C_e$  on a second side of the brake disk ; -- a caliper 10 for transmitting the braking forces generated by the second brake pad to the first side of the brake disk, with a first caliper arm or arm on which element number "38" is located on the first side of the brake disk, a second caliper arm or arm on which reference character "De" is located on the second side of the brake disk, and a connecting device (one portion shown at the bottom of the lead line of number 56 and the other portion shown in the area of the end of the lead line of number 10) for joining the first caliper arm with the second caliper arm; and a clamping device 36, which has a center axis perpendicular to the brake disk and is designed to force the first brake pad against the brake disk, wherein the second center of gravity, both in the position of rest of the brake and when the brake is actuated, is offset relative to the first center of gravity by a predetermined first distance in the direction of a brake disk run-out side corresponding to the preferred direction of rotation of the brake disk as shown in figure 1, and the second caliper arm is offset relative to the first caliper arm by a predetermined second distance in the direction of the brake disk run-out side as shown in figure 1, wherein the minimum radial distance between the connecting device and the brake disk is shorter on the brake run-out side than on a brake disk run-in side, at least in the region in which it spans the brake disk as shown in the annotated figure on pg. 4 of the instant Office action.



Re: claim 2. See figure 2 of Mery et al.

Re: claims 10-12. Mery et al. show in the annotated figure below the limitation wherein in the projection parallel to the brake disk, the opening has a concave contour on the brake disk run-in side and a more or less linear contour on the brake disk run-out side and that this more or less linear contour forms an acute or obtuse angle with the plane of the brake disk.



Re: claim 14. Mery et al. show in figure 1 the limitation of a plate-shaped support structure 12.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 13, and 17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mery et al.

Re: claim 9. Mery et al. show in figure 4 the limitation wherein the contour of the opening is more or less that of a parallelogram, as best understood, in order to fit within the particular real estate constraints. In *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) the court held that the configuration of a claimed object was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration was significant.

Re: claims 13 and 17. Mery et al. show in figure 4 the limitation wherein the outer contours (one shown below the end of the lead line of number 18 and the other shown below the end of the lead line of 12) of the caliper on the brake disk run-in side and the brake disk run-out side are more or less parallel to each other and preferably perpendicular to the plane of the brake disk. In *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) the court held that the configuration of a claimed object was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration was significant.

6. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mery et al. in view of US Patent 5568845 to Baumgartner et al.

Mery et al. are silent with regards to the disk brake being pneumatically and or electromotively actuated.

Baumgartner et al. teach in col. 1 lines 9-11 the use of a disk brake being pneumatically actuated and for use in commercial vehicles.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the disk brake of Mery et al. to have been pneumatically actuated as taught by Baumgartner et al., in order to provide a means of pressing the pads against the brake disk to decelerate the vehicle.

### ***Response to Arguments***

7. Applicant's arguments filed 2/8/11 have been fully considered but they are not persuasive. Examiner notes that the arguments with respect to the rejection using Mery et al. are moot in light of the new interpretation of Mery et al. set forth in the annotated figure on pg. 4 of the instant Office action. Examiner notes that the new interpretation was necessitated by Applicant's amendment.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb  
March 12, 2011

/Melody M. Burch/  
Primary Examiner, Art Unit 3657